IN THE UNITED STATED DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PATRICIA DELGADO	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 16-cv-1899
	)	
THE UNITED STATES OF AMERICA,	)	
SILVER CROSS HOSPITAL AND	)	Judge Lefkow
MEDICAL CENTERS and	)	
MAZEN M. KA WJI, M.D.	)	
	)	
Defendants.	)	

DEFENDANT SILVER CROSS HOSPITAL'S MOTION TO DISMISS

Defendant, SILVER CROSS HOSPITAL AND MEDICAL CENTERS ("Silver Cross"), through its undersigned counsel and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, submits this Motion to Dismiss Count II of Plaintiff's Amended Complaint ("Amended Complaint").

INTRODUCTION

In this medical malpractice action, Plaintiff, Patricia Delgado ("Delgado"), alleges that Silver Cross, through its agents, failed to timely diagnose and treat Delgado for complications following the birth of her child. Delgado also alleges that Silver Cross failed to establish and enforce protocols for the care of post-delivery vaginal hemorrhage patients and failed to properly store narcotic medications. Delgado brings state law medical malpractice claims against Silver Cross based on theories of institutional negligence and vicarious liability (Count II). Counts I and III also set forth state law medical negligence claims directed at Dr. Cheryl Thompson-

Cragwell[1] and Dr. Mazen M. Kawji, the alleged agents of Silver Cross.

The Amended Complaint must be dismissed because it contains a number of pleading failures, including Delgado's failure to submit a proper report authored by a qualified reviewing physician to support the medical negligence claims, as required by 735 ILCS 5/2-622. Even under the liberal notice pleading standard in federal court, Delgado must comply with Section 5/2-622, which requires her to submit a report by a qualified physician setting forth the specific deficiencies in medical care, the reviewing professional's reasoning and either the standard of care that was violated or an appropriate alternative course of treatment. The two reports Delgado submitted fail in every respect, and therefore Count II should be dismissed with prejudice.

FACTUAL BACKGROUND[2]

Allegations from the Amended Complaint

On March 5, 2013, Delgado went into labor and was admitted to Silver Cross under the care of Dr. Thompson-Cragwell, an obstetrician/gynecologist. (Am. Compl., ¶9, 11, attached as Exhibit A). Delgado gave birth to a daughter that day, but afterwards she experienced postpartum bleeding, abdominal pain and low grade fevers. (Ex. A, ¶¶12-14). She was discharged on March 7, 2013, but returned on March 9, 2013, due to bleeding. (Ex. A, ¶¶15, 18-19). Dr. Thompson-Cragwell again saw Delgado and determined that "retained products of conception remained in [her] uterus" following childbirth. (Ex. A, ¶¶21-22). Plaintiff was hospitalized at Silver Cross until March 22, 2013 where she was treated by Dr. Thompson-Cragwell and seen by a cardiologist, Defendant Mazen Kawji, M.D. ("Dr. Kawji"). (Ex. A,

[1] The United States of America substituted in as a party defendant for Dr. Thompson-Cragwell, as Dr. Thompson-Cragwell provided care to Delgado as a physician for the Will County Health Department/Will County, a federal funded clinic. As such, Dr. Thompson-Cragwell is deemed to be an employee of the United States under the Federal Tort Claims Act.

[2] Pursuant to Rule 12(b)(6), the factual allegations in the Complaint and the Section 5/2-622 reports are accepted as true only for purposes of deciding this motion. This Defendant reserves the right to challenge each and every allegation in the Amended Complaint at a later date.

¶¶25-33).

The Section 5/2-622 Reports

In support of the Amended Complaint, Delgado filed two reports of reviewing physicians pursuant to 735 ILCS 5/2-622 – one by an emergency medicine physician (the "EM Report," attached as Exhibit B) and one by an obstetrician/gynecologist (the "OB/GYNE" Report, attached as Exhibit C).[3] The author of the EM Report states that he is licensed to practice medicine and is board certified in emergency medicine, but there is nothing in the report to suggest the author is qualified to opine about obstetrics/gynecology, cardiology or hospital management or administration. For example, the report does not contain any information to suggest the author has practiced or taught in these specialized areas. There is no information in the report to suggest the author has experience or expertise in the fields of obstetrics/gynecology, cardiology or hospital management or administration.

Notwithstanding the absence of any basis to offer an expert opinion in this case, the author of the ER Report criticizes Dr. Thompson-Cragwell for discharging Delgado from the hospital on March 5, 2013 and for prescribing Delgado Coreg and Toradol, all of which are decisions Dr. Thompson-Cragwell would have made as an obstetrician in the course of delivering obstetrical care. Similarly, and despite having no basis to offer cardiology opinions in this case, the author criticizes Dr. Kawji, a cardiologist, for prescribing the use of a beta-blocker, which is a decision Dr. Kawji would have made in the course of delivering cardiology care. Finally, and despite having no basis for offering opinions about the management of a hospital or pharmacy, the author criticizes Silver Cross for failing to establish and/or enforce protocols for the care of post-delivery vaginal hemorrhage patients and for failing to properly organize or store

[3] The reports are not signed, nor are the names of the reviewing physicians provided in the reports. Plaintiffs are not required to identify the physician who authors a Section 5/2-622 report under Illinois law.

narcotic medications.[4]

The OB/GYNE Report is directed against Silver Cross and Dr. Thompson-Cragwell, but not Dr. Kawji. Although the author of the OB/GYNE Report may have the qualifications to offer opinions regarding obstetrical or gynecological care, there is nothing in the report to suggest the author is qualified to opine about the management of a hospital, including what types of protocols should be in place or whether protocols were followed. Nonetheless, and like the ER Report, the OB/GYNE Report purports to certify a cause of action against Silver Cross for institutional failures without foundation.

As for Dr. Thompson-Cragwell, the OB/GYNE Report identifies only three criticisms: (1) failing to timely diagnose and treat retained fragments of conception; (2) discharging Delgado on March 7, 2013 despite hemorrhaging and (3) prescribing Coreg when an unidentified nephrologist stated an ACE inhibitor should be prescribed. (Ex. C, ¶4). However, the Amended Complaint contains six additional criticisms that are not in the OB/GYNE Report.

STANDARD FOR DISPOSITION

On a motion to dismiss, the issue is not whether the plaintiff will ultimately prevail, but whether he is entitled to offer evidence to support the claims. *Cole v. U.S. Capital, Inc.*, 389 F.3d 719, 724 (7th Cir. 2004). To survive a motion to dismiss, a complaint must allege enough facts to state a claim for relief that is plausible on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 569, 127 S.Ct. 1955, 1974 (2007). The factual allegations in the complaint must be sufficient to raise the possibility of relief above the speculative level, assuming that all of the allegations in the complaint are true. *EEOC v. Concentra Health Servs., Inc.*, 496 F.3d 773, 776 (7th Cir. 2007) (citation omitted). For a claim to have minimal plausibility, a plaintiff must plead

[4] The ER Report also criticizes Silver Cross for the conduct of Dr. Thompson-Cragwell and Dr. Kawji, which is no different than alleging vicarious liability. The criticisms of Silver Cross based on the conduct of these two doctors are deficient for the same reasons they are deficient as to the two doctors. The author is not qualified to make them.

"factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009).

It is well-settled that 735 ILCS 5/2-622 of the Illinois Code of Civil Procedure ("Section 5/2-622") is a substantive requirement that applies to medical malpractice claims brought in federal courts. *Ortiz v. United States,* 2014 WL 642426, at *3 (N.D. Ill. Feb. 19, 2014); *Williams v. Erickson,* 2013 WL 5548837, at *2 (N.D.Ill. Oct. 8, 2013); *and Chapman v. Chandra*, 2007 WL 1655799, at *3 (S.D. Ill. June 5, 2007). Notwithstanding the liberal notice pleading standard in federal court, a complaint alleging medical malpractice under Illinois law must still comply with Section 5/2-622. *Ortiz,* 2014 WL 642426, at *3 (N.D. Ill. Feb. 19, 2014). Section 2-622 creates an additional, separate requirement that is unrelated to the federal notice pleading standard for complaints. *Chapman*, 2007 WL 1655799, at *4. In fact, no allegation in a complaint can satisfy the requirements of Section 2-622. *Hahn v. Walsh*, 686 F.Supp.2d 829, 831 (C.D.Ill.2010).

Section 5/2-622 provides that a medical malpractice complaint must be accompanied by a certificate stating that a qualified, licensed physician has reviewed the case and determined in a written report that the lawsuit is reasonable and meritorious. *735 ILCS 5/2–622 (a)(1); see also Sherrod v. Lingle*, 223 F.3d 605, 613 (7th Cir.2000). The written report must also be attached to the complaint and clearly identify "the reasons for the reviewing health professional's determination that a reasonable and meritorious cause for the filing of the action exists." *735 ILCS 5/2–622 (a)(1).* The failure to satisfy these statutory provisions requires mandatory dismissal. *735 ILCS 5/2–622 (g); Sherrod*, 223 F.3d at 613.

ARGUMENT

I. Delgado's Section 5/2-622 Reports Are Deficient Because the Reviewing Physicians Are Not Qualified.

Under Illinois law, the physician who authors a Section 5/2-622 report must have the requisite qualifications to express an expert opinion, and those qualifications ***must be set forth in the physician's report***. *See Hull v. Southern Illinois Hospital Services*, 356 Ill. App. 3d 300, 305 (2005), *citing Moyer v. Southern Illinois Hospital Service Corp*., 327 Ill. App. 3d 889, 897 (2002) (emphasis added). The statutory requirements are unambiguous: (1) the physician must be licensed to practice medicine; (2) the physician must also practice or have practiced within the last 6 years, or teach or have taught within the last 6 years, in the same area of health care or medicine that is at issue in the particular action; and (3) be qualified by experience or demonstrated competence with the standard of care, methods, procedures and treatments relevant to the allegations at issue in the case. *See* 735 ILCS 5/2-622(a)(1)(ii-iii). Dismissal is appropriate where the report fails to show that the reviewing physician has competence or current experience in the subject area of the allegations. *See Culbertson v. Axelrod,* 282 Ill. App. 3d 1027, 1037 (1st Dist. 1996). Simply including a statement such as – "I have actively practiced within the past six years" – does not satisfy the requirements of Section 2-622(a)(1)(ii). *Id*. at 1036.

Here, the reports come nowhere close to satisfying the requirements of Section 5/2-622(a)(1). Although the ER Report states it was prepared by a licensed physician who is board certified in emergency medicine, it fails to set forth this physician's knowledge of and/or experience with treating patients like Delgado (suffering from childbirth complications) under the same circumstances (in a non-emergency room setting). (Ex. B). In fact, there is no attempt to show how an emergency room physician would be qualified to speak to the quality of care provided by an obstetrician/gynecologist or a cardiologist, particularly to a woman suffering from post-childbirth complications in a non-emergency room setting.[5] Stating the physician is "familiar with the issues of treatment involved herein" and "familiar with the standard of care on the matters at issue," without ever identifying the issues or applicable standard of care is not enough. *Culbertson v. Axelrod*, 282 Ill. App. 3d 1027 (1st Dist. 1996). Likewise, there is nothing in the ER Report to suggest the author has any basis to criticize the management or administration of a hospital. In short, there is nothing in the ER Report to suggest the author is qualified to express an opinion against Silver Cross, Dr. Thompson-Cragwell or Dr. Kawji.

In *Culbertson v. Axelrod*, 282 Ill. App. 3d 1027 (1st Dist. 1996) a physician and surgeon authored a Section 5/2-622 report criticizing the care of a pathologist, a pulmonologist, a thoracic surgeon and a general practitioner for failing to diagnose a cancerous tumor. *Id.* at 1031. The Illinois appellate court held that the Section 5/2-622 report was insufficient because the physician defendants specialized in "vastly different" areas and the reviewing health professional, a surgeon, lacked competence or current experience in the subject area to render standard of care opinions against the defendant-physicians. *Id.* at 1034, 1037. The *Culbertson* court specifically held that the statement – "I have actively practiced within the six years" – was insufficient by itself to satisfy Section 5/2-622. *Id.* at 1036. Here, as in *Culbertson*, the reviewing physician is an emergency medicine physician, not a cardiologist, an obstetrician or a gynecologist. Nor does he claim to have any experience or expertise running a hospital. As a result, the physician has failed to demonstrate his competence in the subject matter.

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[5] For example, the author of the ER Report does not state that he has experience caring for patients with retained products of conception outside of the emergency room to a patient like Delgado nor does he state that he has experience prescribing beta-blockers outside of the emergency room setting to a patient like Delgado.

The OB/GYNE Report as to Silver Cross fares no better.[6] The author of the OB/GYNE Report fails to set forth any knowledge of and/or experience with establishing or enforcing hospital policies, procedures or protocols in general or with respect to caring for post-delivery hemorrhaging patients. The report also fails to state how the author is experienced in the field of hospital administration or how he is familiar with the organizational schemes for narcotics. In short, nothing in the OB/GYNE Report suggests the author: (1) is qualified to certify this cause of action as to the alleged conduct of the hospital as an institution, (2) is familiar with the standard of care for a hospital, or (3) is qualified by experience to opine against a hospital as an institution.

II. The Section 5/2-622 Reports Do Not Support The Allegations Of The Amended Complaint

A. The allegations of negligence in the Amended Complaint that are not present in the Section 5/2-622 Reports should be stricken with prejudice.

A complaint alleging medical malpractice is inadequately pled where the allegations of negligent conduct set forth in the complaint are not supported by the Section 5/2-622 report. *See Ortiz*, 2014 WL 642426, at *3 (N.D. Ill. Feb. 19, 2014) (plaintiff's Section 5/2-622 report failed to support claim for institutional negligence where plaintiff's complaint listed 10 negligent failures as the bases for liability, but Section 5/2-622 report repeated only five of the negligent acts or omissions).

The Amended Complaint in this case alleges 15 types of negligent conduct against Silver Cross. (Ex. A, ¶¶46). The two Section 5/2-622 reports combined, however, assert only nine

[6] This Motion is not directed at the qualifications of the author of the OB/GYNE Report to give opinions against another obstetrician/gynecologist.

categories of negligence against Silver Cross; namely that:[7]

1. Dr. Thompson-Cragwell negligently discharged Plaintiff on March 5, 2013, despite hemorrhaging. (Ex. B, ¶5)(Ex. C, ¶4)

2. Dr. Thompson-Cragwell negligently prescribed Coreg. (Ex. B, ¶5)(Ex. C, ¶4)

3. Dr. Thompson-Cragwell negligently prescribed Toradol. (Ex. B, ¶5)

4. Dr. Thompson-Cragwell failed to remove retained fragments of conception. (Ex. C, ¶4)

5. Dr. Thompson-Cragwell failed to timely diagnose and treat retained fragments of conception. (Ex. C, ¶4)

6. Dr. Kawji negligently ordered and advised the use of a beta-blocker. (Ex. B, ¶6)

7. Silver Cross negligently discharged Plaintiff on March 5, 2013, despite hemorrhaging. (Ex. B, ¶3)(Ex. C, ¶6)

8. Silver Cross failed to establish and/enforce protocols for the care of post-delivery vaginal hemorrhage patients. (Ex. B, ¶4)(Ex. C, ¶6)

9. Silver Cross failed to properly organize and/or store narcotic medications. (Ex. B, ¶4)(Ex. C, ¶7)

All additional allegations against Silver Cross from the Amended Complaint that are not contained in either of the Section 5/2-622 Reports must be stricken with prejudice.

B. The Section 2-622 Reports do not support Count II because they fail to set forth any facts that could feasibly support a claim for institutional negligence.

As set forth above, to satisfy the requirements of Section 5/2-622, the report must describe the specific deficiencies in medical care that gave rise to plaintiff's claim, set forth the reviewing professional's reasoning, and state either the standard of care or an appropriate alternative course of treatment. *Maldonado v. Sinai Med. Grp., Inc.*, 2008 WL 161671, at *4

[7] Each report contains 7 allegations of negligent conduct, with 6 of the allegations appearing nearly verbatim in each report.

(N.D.Ill. Jan. 16, 2008); *Hull v. S. Illinois Hosp. Servs.*, 826 N.E.2d 930, 935 (Ill.App.Ct.2005). The report must also explain how, rather than merely assert that, the plaintiff's condition could have been improved by the alternative conduct. *Tucker v. St. James Hosp.*, 665 N.E.2d 392, 396 (Ill.App.Ct.1996).

Delgado's Section 5/2-622 reports do not contain *any* facts that could feasibly support her claim for institutional negligence against Silver Cross, because the reports are full of conclusory statements that fail to describe what conduct was deficient or why it was deficient, what the standard of care was or what alternative conduct might have been appropriate. Rather, the reports simply conclude that Silver Cross "failed to establish and/or enforce appropriate protocols for the care of patients post-delivery with vaginal hemorrhage and failed to properly place narcotic medications in the appropriate bins." (Ex. B, ¶ 4, Ex. C, ¶ 6). The reports do not identify which protocols should have been established, which ones were not enforced or which ones should have been enforced. The reports also fail to identify which specific protocol related to the organization, storage, supply, labeling and administration of narcotics was required and/or not provided.

The reports fail to set forth any duty that could be carried out by a hospital on an independent basis. For example, the alleged duty to inform Delgado of retained placental parts, as well as the duty to advise patients of their medical diagnoses, belong exclusively to a licensed physician – *not* a hospital. The Hospital in this case would be restricted by the Medical Practice Act and Hospital Licensing Act from undertaking such duties.[8] Finally, the reports fail to explain how the aforementioned acts or omissions were negligent. Because the Section 5/2-622

[8] *See* Medical Practice Act of 1987, 225 ILCS 60/1, et seq., *and see* Hospital Licensing Act, 210 ILCS 85/1, et seq.

reports do not support Delgado's allegations of institutional negligence, Count II must be dismissed.

C. The vague allegations of agency that are not supported by the Section 5/2-622 Reports must be stricken.

A Section 5/2-622 report must specifically discuss the involvement of each defendant. *Giegoldt v. Condell Medical Center*, 328 Ill.App.3d 907, 912 (2nd Dist. 2002). The report must discuss the involvement of each defendant in the treatment of the plaintiff and must be more than a "generalized conclusion" of malpractice. *Jacobs v. Rush*, 284 Ill.App.3d 995, 1000 (1st Dist. 1996).

In Count II, Delgado seeks recovery for the acts or omissions of unidentified "servants and employees" of Silver Cross, including various unidentified "on duty doctors and nurses...other nurses, physicians and medical personnel." (Ex. A, ¶¶5, 16, 24, 29, 36, 40, 41, 42, 45, 46). No effort whatsoever is made to identify who these people are, what their job titles are or what each specific person did or failed to do to constitute negligence. The reports are the functional equivalent of pointing to the haystack and asking Silver Cross to find the needle. As a result, Silver Cross can only guess which healthcare providers might have been involved, or what they might have done or failed to do to constitute negligence.

This is not an insignificant defect. The reports cover nearly every employee and type of provider and every conceivable standard of care from two admissions that spanned over a period of 15 days. To support a claim of vicarious liability, a Section 5/2-622 report must identify the specific providers alleged to have acted negligently, if not by name then by date and time, title and type of care provided. Therefore, all vague references to unidentified agents, servants, employees on duty doctors and/or nurses in the Amended Complaint must be stricken.

D. The Section 5/2-622 Reports improperly commingle allegations of vicarious liability, institutional negligence, physician negligence and nursing negligence.

Under Illinois law, all pleadings are to contain a plain and concise statement of the pleader's cause of action. *735 ILCS 5/2-603(a).* Section 5/2-603 further provides that each cause of action upon which a separate recovery might be had shall be stated in a separate count and each count shall be separately pleaded. *735 ILCS 5/2-603(b).*

The Amended Complaint improperly commingles her theories of negligence. In Count II, Delgado alleges that Silver Cross Hospital, by and through its agents, apparent agents, employees and servants, including but not limited to Dr. Kawji and Dr. Thompson-Cragwell, and on duty nurses, were negligent in its care and treatment of Delgado for one or more of the following reasons:

(a) Failed to properly perform the birth of Plaintiff's child;

(b) Performed a child birth but failed to remove all fragments of conception from Plaintiff's uterus after the child birth and prior to discharge;

(c) Failed to properly evaluated and diagnose the Plaintiff's medical condition after the child birth;

(d) Negligently discharged Plaintiff from Silver Cross before she was medically ready to be discharged;

(e) Negligently discharged Plaintiff from Silver Cross despite unrelenting transvaginal hemorrhaging post-delivery;

(f) Failed to properly evaluate and diagnose the Plaintiff's medical condition upon readmission to the Silver Cross Emergency Department;

(g) Failed to properly inform Plaintiff upon readmission to Silver Cross that Retained Products of Conception were left in her at the time of child birth;

(h) Failed to properly diagnose the Plaintiff's condition and concurrently prescribed medications, including Coreg and Toradol which were contraindicated by Plaintiff's medical condition and further injured and worsened Plaintiff's medical condition;

(i) Failed to follow the consultation and recommendation of the consulting physicians of administering an ACE inhibitor, and instead prescribed Coreg which was contraindicated by Plaintiff's medication condition;

(j) Fell below the standard of care required of physicians, surgeons and providers of their type;

(k) Was negligent in their evaluation, diagnosis, treatment plan and treatment of Plaintiff;

(l) Negligently failed to establish and/or enforce protocols for the appropriate care and treatment of Plaintiff for post-delivery vaginal hemorrhage;

(m) Negligently and dangerously failed to properly organize, store and supply various narcotic medications, including Norco, in Defendant Silver Cross' facility and individual storage bins;

(n) Negligently allowed narcotic medications to be improperly organized, stored and/or labeled at Silver Cross which caused Plaintiff to be administered excessive doses of Norco by Silver Cross agents, apparent agents, and/or employees; and

(o) Was otherwise careless and negligent in their care and treatment of Plaintiff.

(Ex. A, ¶¶46).

Delgado improperly commingles her allegations of vicarious liability, institutional negligence, physician negligence and nursing negligence in a single paragraph and single count without differentiating the alleged acts of negligence of the Hospital, the nursing staff, the physicians, or the Defendant-physicians. (Ex. A, ¶46). Accordingly, Count II must be dismissed.

The Section 5/2-622 Reports are equally deficient. In the same paragraph and without attempting to differentiate her theories of negligence, Delgado alleges that the Hospital, the physicians and the nursing staff failed to act in certain ways. That is improper, as Section 5/2-622 requires that where multiple specialties are involved in a case, a separate certificate from a healthcare practitioner is required for each specialized category of defendant. If not separate certificates, then at least separate paragraphs are required for each category of defendant. *See Premo v. Falcone*, 197 Ill.App.3d 625, 631 (2nd Dist. 1990).

For example, the ER Report alleges that the "nurses, physicians and agents of Silver Cross…deviated from the standard of care for a Hospital in failing to treat actively bleeding patients before they are discharged." (Ex. B, ¶3). This is improper, as the author of the report purports to claim negligence on behalf of the nursing staff, physicians and the Hospital in a single paragraph and without distinguishing what allegations relate to each category of defendant.

The OB/GYNE Report alleges that "agents of Silver Cross Hospital…deviated from the standard of care for a Hospital which is to treat actively bleeding patients before they are discharged. The Hospital also failed to either establish and/or enforce appropriate protocols for the care and treatment of post-delivery vaginal hemorrhage." (Ex. C, ¶6). The OB/GYNE Report further alleges that "…the Hospital further deviated from the standard of care when its agents placed Norco into the wrong medication bin which resulted in Delgado receiving double the dose of narcotics than was ordered or appropriate." (Ex. C, ¶7). This is also improper because while the author alleges a failure to establish Hospital protocols for the appropriate care and treatment of patients for post-delivery vaginal hemorrhage, the author fails to state facts to support that the nursing staff had any duty to establish Hospital policies. Similarly, the author alleges a failure to properly organize and store various narcotic medications at the Hospital, but states no facts to support that the nursing staff had any duty to organize and store such medications.

The Section 5/2-622 Reports are collectively improper because they fail to distinguish (let alone identify) the allegedly negligent conduct of the nurses from that of the physicians and that of the Hospital. If Delgado is claiming negligence on behalf of the nursing staff, physicians and the Hospital as an institution, then she is required to file three separate Section 5/2-622 Reports, or at least distinguish which allegations relate to which category of defendant in separate paragraphs. One must be against the nursing staff, another must be against the physicians, and a third must be against the Hospital as an institution. Delgado's attempt to lump these allegations together results in a confusing, unclear, and jumbled pleading that is contrary to Illinois law. Accordingly, Count II must be dismissed.

CONCLUSION

For the reasons set forth above, Defendant Silver Cross Hospital and Medical Centers respectfully requests that Count II of Plaintiff's Amended Complaint be dismissed with prejudice or that the deficient allegations in Count II be stricken with prejudice.

Respectfully Submitted,

SILVER CROSS
HOSPITAL AND MEDICAL CENTERS

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